

This is the 1st affidavit
of Norman Shields in this case
and was made on March 26, 2021

COMMISSION OF INQUIRY INTO MONEY LAUNDERING IN BRITISH COLUMBIA

THE HONOURABLE MR. AUSTIN F. CULLEN, COMMISSIONER

AFFIDAVIT

I, Norman Shields, of 50 Ultimate Drive, Richmond Hill, Ontario AFFIRM THAT:

1. I am the Vice President, Finance and Administration, of BMW Canada Inc. ("**BMW Canada**"). I make this affidavit in support of BMW Canada's submission to the Commission of Inquiry into Money Laundering in British Columbia (the "**Inquiry**").
2. I have acted in my role as Vice President, Finance and Administration of BMW Canada since July 2019. In my role as Vice President, I am involved with the oversight and implementation of BMW Canada's policies and procedures to combat the unauthorized reselling and exporting of its vehicles. As such, I have personal knowledge of the facts hereinafter deposed, except where stated to be on information and belief, and where so stated, I believe them to be true.

BMW Canada's Distribution Model

3. In Canada, BMW Group uses a standard dealership model for the distribution of its products and services, and for offering vehicle financing and leasing.
4. Authorized BMW dealers in Canada are independently owned and operated legal entities who sell, finance and lease BMW vehicles to customers in Canada. Financing and leasing are supported by BMW Financial Services Canada, a division of BMW Canada ("**BMW Financial Services**").
5. Authorized BMW dealers function as the retail arm for the sale, financing and leasing of BMW vehicles and services in Canada.
6. Pursuant to various contractual obligations between BMW Canada and its dealers in Canada, authorized BMW dealers are generally not permitted to sell new BMW vehicles to other resellers, nor are they permitted to sell vehicles for export.

Unauthorized resale and/or export of BMW vehicles

7. British Columbia, and in particular Vancouver, are significant markets for the purchase of luxury vehicles. Unfortunately, it is also a significant market for the unauthorized export of BMW and other luxury vehicles to foreign jurisdictions. This is an issue that BMW Canada has been grappling with across Canada since 2014/2015, though the issue is particularly acute in British Columbia, and has typically affected certain, specific models and trim lines of BMW vehicles (notably BMW X5 and X7 vehicles). BMW Canada is aware of, and actively works to combat, this grey market for its vehicles.

8. This affidavit first summarizes the methods that, in BMW Canada's experience, are utilized by unauthorized exporters. It then outlines the steps BMW Canada has undertaken to combat the issue. Finally, several policy and other recommendations are outlined that we believe have the potential to assist in combatting the issue.

Methods employed by exporters

9. In my role as Vice President, I am personally involved with the oversight and implementation of BMW Canada's policies and procedures to combat the unauthorized reselling and export of its vehicles. My personal efforts to prevent the reselling of BMW vehicles includes regular review of BMW Canada's non-export agreement, red flag checklists, and dealer policies. As a result of my efforts in this respect, I am familiar with steps BMW Canada has undertaken to prevent the unauthorized export of its vehicles.

10. I also have regular discussions with BMW's retailers in Canada to get feedback on BMW Canada's export prevention efforts and determine the problems retailers face in combatting exports. These retailers, in turn, provide me with information on the situations they encounter at dealerships. As a result of these discussions, I am aware of the methods that unauthorized exporters use to attempt to obtain cars from BMW Canada retailers for export.

11. I also engage in regular discussions with BMW Canada's audit, controlling, and sales departments, members of its financial services division, and regional staff. Members of these teams are responsible for, among other things, coordinating BMW's administrative response when a suspected export attempt is discovered, which in turn lead BMW to engage in preventative actions, including litigation. As a result of my discussions with members of these BMW divisions, I have come to understand many of the typical methods used by exporters, and tell-tale signs that a vehicle has likely been purchased by an exporter.

12. Finally, I am also involved with BMW's attempts to combat the unauthorized export of its vehicles through litigation.

13. As a result of my involvement in BMW Canada's anti-export efforts, as described above, I am aware that unauthorized exporters acquire vehicles, ostensibly for domestic use, through intermediaries or nominee purchasers or lessees, and once in possession of a vehicle, they rapidly transfer it to individuals or entities that ship the vehicles overseas. My understanding, and that of our dealers in Canada, is that an

exporter will attempt to conceal their true motivations and will finance the transaction through one of several methods described below.

14. Attached hereto and marked as **Exhibit "A"** is a true copy of BMW's petition to the Vancouver Registry of the BC Supreme Court file number S-191017. Attached hereto and marked as **Exhibit "B"** is a true copy of the first affidavit of Robert Kish in BC Supreme Court file number S-191017. Attached hereto and marked as **Exhibit "C"** is a true copy of the first affidavit of Katelyn Scott in BC Supreme Court file number S-191017. Attached hereto and marked as **Exhibit "D"** is a true copy of the order of Master Scarth in BC Supreme Court file number S-191017. These materials outline BMW's discovery of an attempt to export of one of its vehicles. The 2019 X5, which was purchased on January 2, 2019, and was located within a month at a garage, unlicensed and blocked in by other luxury vehicles.

15. I also attach two notices of civil claim that have been filed by BMW in the wake of such schemes. Attached hereto and marked as **Exhibit "E"** is a true copy of BMW's notice of civil claim file in the Vancouver Registry of the BC Supreme Court in file number S-195472. Attached hereto and marked as **Exhibit "F"** is a true copy of BMW's notice of civil claim file in the Vancouver Registry of the BC Supreme Court in file number S-195474.

16. This is a representative selection of the claims BMW has pursued in respect of export schemes it has discovered. While the claims outlined in these pleadings have not yet been proven in court, the documents provide examples of some of the ways that I understand unauthorized exporters acquire vehicles through nominees.

Sending a nominee or impersonator to the dealer

17. The schemes are explained in a generalized way in the paragraphs that follow. My understanding of these schemes is based on my anti-export efforts, as described above, including my conversations with BMW Canada's retailers, audit, controlling and sales departments, members of its financial services divisions, and regional staff, involvement with BMW Canada's policy development, and litigation efforts to seize vehicles when BMW locates them before or after export.

18. **The Straw Buyer:** In many cases, the exporter has located a nominee (sometimes called a "straw buyer") that will attend at the dealer location to procure a vehicle on their behalf. The straw buyer holds themselves out as the intended user of the vehicle within Canada, using their own legitimate identification and credit history.

19. Nominees may be found by the exporter through word-of-mouth, online advertisements, or social media, including chatrooms. Advertisements solicit individuals to act as an agent in acquiring vehicles and resolving the alleged "restrictive trade practices" perpetrated by automotive manufacturers and distributors. It is claimed that certain vehicle manufacturers do not have adequate stocks of vehicles abroad, creating a demand that cannot be satisfied domestically, requiring the shipment of vehicles from abroad to meet

demand. These statements are entirely untrue, and the grey market shipment of vehicles from Canada to other countries is for entirely different and illicit reasons, as detailed in the Second German Report.

20. Straw buyer arrangements may involve use of an "Agency Agreement" or other pseudo-legal agreement between the nominee and exporter that give the appearance of a true legal agreement to the nominee. Terms may include the details of an agency relationship, and that the exporter will pay all costs for the vehicle. Certain agreements may also state that should there be any costs or losses experienced by the straw buyer, the exporter will indemnify them for all losses. As further detailed in below in the section on finance fraud, it is often the case that the nominee ultimately themselves become the victim of fraud.

21. Straw buyers are often compensated by one-time financial payments that may range from a few hundred to several thousand dollars.

22. Identity Fraud: In some cases, the identity of a real person is manipulated and stolen. This may occur through online theft of personally identifiable information, or theft of identification documents that allow new documents to be created. Identification using the data of the "real" person, but with the photo of the fraudster is created and taken to the dealer and used to pass the fraudster off as that person.

23. Synthetic Identity Fraud: Alternatively, an entirely false person may be created through the manufacturing personally identifiable information. This involves the cultivation of a profile of personally identifiable information. This provides the "fake" person with all of the hallmarks of someone that is legitimate, including address, employment and credit history. Requests for credit are accompanied by employment and addresses, which are provided to credit reporting agencies by those offering credit. A profile may begin to emerge over time, and when a sufficiently mature or robust profile exists (including a respectable credit score), that false profile may pass usual credit and other checks to be approved for credit.

24. Corporations: Finally, in some circumstances, BMW Canada has noted the use of federal or provincially-incorporated companies that are presented as needing employee or fleet vehicles for their business operations, when in fact, the businesses do not actually operate or have employees.

Completing purchase and lease transactions:

25. The exporter or nominee may pay for the purchase of a vehicle in full using various payment methods, or may choose to finance a purchase using credit obtained from other lenders. Alternatively, transactions are funded in whole or in part by BMW Financial Services.

26. Certain dealerships will require that the customer provide an initial deposit, which may be paid by credit card, cash, bank draft, or personal cheque payable to dealer, at the dealer's option.

27. Thereafter, the customer must either provide payment in full of the remaining balance due, or sign a Conditional Sales Agreement (financing agreement) or Lease Agreement with BMW Financial Services.

28. In a financing arrangement, the customer becomes the registered owner of the vehicle, and agrees to make regular installment payments of the balance financed. In a leasing arrangement, BMW Canada is the owner of the vehicle, and it is leased to the customer for a fixed term.

29. Full payment being rendered at the time of sale generally involves the provision of a bank draft or wire transfer to the dealer. In a financing or lease arrangement, funds will be advanced to the dealer by BMW Canada, with the customer providing any required down-payment or payment of any additional "due on sale" amounts that may be owed by credit card, cash, bank draft, or personal cheque payable to dealer, subject to the dealer's requirements.

30. Prior to completing the purchase or lease of selected models of BMW vehicles, pursuant to BMW Canada policy, each customer must sign an Unauthorized Re-Sale and Non-Export Agreement ("**Non-Export Agreement**"); detailed further in section on Non-Export Agreement and enforcement below). This document contains a variety of covenants, including a representation that the vehicle is solely intended for the use of the customer(s) and any permitted secondary drivers, and is not intended for resale or removal from Canada within the twelve months immediately following delivery to the customer. The customer relying upon BMW Canada financing is also required to sign a standardized financing or loan agreement. Once all identity and insurance verification, licensing, vehicle plating and other required steps take place, the vehicle is released to the customer.

31. Once a transaction is completed, a vehicle intended for export may be driven only a very short distance to avoid incurring undesired mileage. Once it leaves the dealer location, the vehicle may be transported by flatbed to another location, where it will be prepared for transport, often via shipping container. In certain cases, this involves disabling or attempting to alter the vehicle's GPS technology and preventing BMW Canada or law enforcement from tracking its exact location.

32. Any straw buyer or fraudulent identity transaction requires that the exporter provide funds, and to conceal the true source of funds. This frequently involves the use of bank drafts, including scenarios where the exporter obtains a bank draft from their financial institution, payable to the dealer, or the exporter obtains a bank draft from their financial institution that is payable to the straw buyer, who in turn purchases a bank draft payable to the dealer.

33. Identifying the source of funds may be challenging for a number of reasons. With regard to wire transfers, in our experience, many financial institutions do not display the name of the party that sent the wire transfer in online banking platforms, nor is the name immediately available to branch representatives, meaning the bank's wire desk must be contacted in order to identify the sender. For bank drafts, not all financial institutions print the name of the purchaser of the bank draft on the draft, making it easy to mask the source of funds.

Finance fraud

34. In many instances, the acquisition of a vehicle involves financing from BMW Financial Services Canada. Based on our review of finance applications of suspected straw buyers, and the similarities in the applications, it appears that the buyers may have been coached regarding what they should state as their career or income, and the amount of a down-payment that should be proffered in order to meet BMW Canada's credit requirements.

35. Based on BMW's experience in uncovering and attempting to prevent export schemes, I believe that straw buyers may not always fully appreciate the exporter's intentions. BMW will, in some circumstances, continue dealing with a straw buyer in attempts to collect payment after the straw buyer has transferred the vehicle to the exporter. BMW has been advised by some of these straw buyers that the exporter has advised of a "change in plans", and assures the straw buyer that payments will follow. Installment payments may be provided by the exporter through deposits to the straw buyer's bank account or cash payments (in one case, described as cash payments to their mailbox each month, by someone unknown to them, until it ceased and the account went into default). Alternatively, the exporter may simply take the vehicle and vanish, leaving the straw buyer to cover any financial obligations. Inevitably, there is a point in time where the straw buyer can no longer afford the regular installment payments, or the leased vehicle due to return fails to materialize, and the straw buyer must then face the consequences.

36. In addition, the straw buyer may find that their identity was used in other automotive finance transactions without their consent, or that it was sold or traded to others for use in fraudulent transactions.

Attempts to prevent unauthorized exports

37. Since 2015, BMW Canada has implemented policies that are applicable to all BMW dealers across Canada to curb unauthorized reselling and export of its vehicles. These policies set out a series of mandatory steps that its dealers must follow when selling, leasing, or financing certain BMW models.

38. BMW Canada revisits and amends these policies on a regular basis to ensure that its practices effectively address the changing methods by which money laundering occurs in the luxury vehicle market. As part of this process, BMW Canada conducts meetings with its dealers to ensure that lessons learned from the retail network are meaningfully incorporated into its policies and practices.

39. BMW's policy, which is specifically communicated to its dealers, is that vehicle sales to unauthorized resellers or individuals who are purchasing for export are prohibited. BMW requires that its dealers complete "know your customer" protocols, obtain additional information from prospective customers and ask questions that will assist in determining if the transaction is suspicious, and also requires that any customers seeking certain targeted vehicle models enter into agreements prohibiting resale or export from Canada within certain timeframes.

40. Other "know your customer" processes include the requirement to obtain valid form of government-issued identification from the customer. All BMW Canada dealer locations now contain ID scanners that recognize thousands of forms of identification from around the world, leveraging embedded security

features within the identification to determine its authenticity. Dealers must confirm that the identification is valid and real, and to maintain a copy of the confirmation of validity, along with any other information collected from the customer, in its file for every transaction.

41. Dealers are also encouraged to carry out enhanced measures as part of the mandatory “know your customer” process, including further investigation upon any discrepancies in information, and dealers may be required to request additional financial or employment information from a customer as part of the additional inquiries.

42. Should any of the following occur, or should a customer decline to meet the requirements of BMW Canada, the dealer is obliged to refuse to sell or lease a vehicle to the customer:

- (a) Failed or inconclusive customer identification;
- (b) The customer refuses to sign the Non-Export Agreement; or
- (c) A payment is presented from a source other than the customer(s).

43. Additional criteria used to assist dealers in identifying suspicious transactions that require additional due diligence, include the following:

- (a) Whether the customer’s home address and primary place of business are within the dealers’ market area.
- (b) Whether the customer is attempting to purchase multiple units of certain BMW models.
- (c) Whether the customer’s business is associated with reselling or exporting vehicles (dealers are encouraged to conduct online or other searches for all business customers).
- (d) Whether the customer has a history with BMW in Canada.
- (e) Any request to deliver a vehicle to a person other than the customer, or to a location other than the customer address.

44. By participating in the flow of information within the BMW retail network in Canada, BMW Canada ensures that its authorized dealers maintain an accurate understanding of how export activity may be curbed effectively.

45. In addition, BMW Canada conducts regular export compliance prevention audits of its dealers to ensure compliance with its policies.

Non-Export Agreement and enforcement

46. Since BMW’s inception in Canada in 1987, export prevention and unauthorized reselling has been prohibited and indicated as such in the various iterations of BMW’s retailer agreements. Within this

contractual context, in 2014, when BMW X5s built for the Canadian market and sold in Canada did not show up at retailers for service, including for example no-charge scheduled maintenance, when BMW X5s began to be reported at Canadian ports for export, when BMW began receiving reports of Canadian-specification BMW X5s in other countries, notably China, and when Canadian-specification BMW X5s began appearing for warranty service, repair and maintenance in other countries, BMW decided to combat these types of unauthorized sales and exporting of BMW X5s through an export prevention policy and measures. Beginning in 2015, BMW established and updated enhanced procedures for certain specific models of vehicles, namely, BMW X5 (initially) and BMW X7 (in 2019) vehicles.

47. Customers intending to purchase, lease, or finance BMW X5 and X7 vehicles sold, leased, or financed in Canada must sign a Non-Export Agreement as part of the transaction. The X5 and X7 models are luxury sport utility vehicles.

48. In BMW Canada's experience, there are a variety of reasons that may attract exporters to X5 and X7 models. Due to positive economic growth in China, resulting in a large and burgeoning growth of the Chinese middle and upper middle classes, demand for X5 and X7 models has skyrocketed. For some years, imports of these vehicles into China could not meet the demand although this has begun to change with additional production coming online, including within China. As a result of these growth factors and demand, BMW's X5 and X7 vehicles are particularly desirable for exporters, as they may be sold abroad for a large profit (i.e. arbitrage) and are seen as a status symbol due to their exclusive nature.

49. Pursuant to the current version of the Non-Export Agreement, the customer represents the following, and may be held liable should their representations be found to be untrue:

- (a) The vehicle is solely for their own benefit and use and, except for permitted secondary drivers, no other party will have direct or indirect control of the vehicle.
- (b) They do not intend to sell the vehicle to another party.
- (c) They will not remove or export or attempt to remove or export the vehicle from Canada without prior written consent from BMW Canada.
- (d) They will submit a written request to BMW Canada should it want to transfer control of the vehicle to another party.

50. A breach of any of these conditions constitutes an event of default under the agreement, which gives rise to potential remedies for BMW Canada to prevent export and/or to seek liquidated damages from the customer.

51. In situations such as the optional buy-out of a lease or finance contract, and due to such considerations as vehicle safety inspections and proof that a vehicle is still in Canada, customers are asked to produce the vehicle. If the vehicle is not produced, the export of the vehicle may be presumed.

52. Additionally, under the Non-Export Agreement, BMW Canada has the right to periodically determine the location of the vehicle for the twelve months following a customer's receipt of the vehicle. It may do so by accessing the vehicle's GPS and/or other technology to confirm that the vehicle is located in Canada, as well as through automatic alerts that the vehicle has entered high risk zones associated with export activities, such as borders or ports.

53. BMW is aware of the links between exports, money laundering and organized crime as indicated in the German Report. For this reason, it wants to combat the practice. BMW Canada has enforced non-export obligations in a variety of civil actions, and successfully prevented the export of many others. Despite these efforts, BMW Canada continues to face attempts by exporters to circumvent its controls and must devote significant effort and resources to continually update and enforce its export prevention policies.

Canadian Law and Enforcement

54. In addition to adhering to internal policies designed to curb export of its vehicles and enforcing Non-Export Agreements through the civil litigation process, BMW Canada works with various law enforcement agencies and personnel wherever possible to prevent export and to recover vehicles.

55. In Canada, there are many law enforcement professionals and agencies dedicated to export prevention. Stakeholders include local and national law enforcement bodies, some of which have specialized automotive theft/fraud/anti-money laundering divisions, investigative divisions of insurers and automotive regulators, and border services agencies, among others. In our experience, these professionals are very dedicated to attempting to curb exports.

56. In working with these stakeholders, BMW Canada has made a number of observations that we wish to share with a view to bringing about positive change. The following comments are those of BMW Canada, and not those of any other stakeholders or individuals.

Proposal for change

57. It is not a crime under the *Criminal Code* of Canada to purchase a vehicle with the intention of exporting it. This approach is opposite that of the United States, which made the exportation of a new vehicle within twelve months of acquisition a crime under its laws, which change resulted in an immediate and very dramatic reduction in that traffic.

58. The implementation of law changes that make it a federal and/or provincial offence to remove a vehicle from Canada within a specified period of time would surely have an impact on these practices, and would bring Canadian law closer into alignment with that of the United States.

59. We understand that the Canada Border Services Agency ("**CBSA**") may have the ability to lay charges in relation to Section 153 or other provisions of the *Customs Act*. We support the use of the

Customs Act to charge any individuals involved in export schemes, and anticipate that use of charging would have a deterrent effect.

60. BMW Canada supports the imposition of regulatory requirements prohibiting cash transactions for vehicles in amounts above \$10,000.

PST Rebates

61. The ability to claim a refund for PST paid on resold vehicles creates an additional financial incentive for unauthorized exporters in British Columbia, and we support the measures recommended in the German Report as having the potential to minimize or eliminate this incentive. Such initiatives included various recommendations including a repeal of any right to claim a PST rebate on an exported vehicles, disallowing rebates for vehicles owned for less than one year, adding a requirement for proof that tax was paid in the importing jurisdiction prior to granting a refund, requiring evidence that there were not any restrictions on resale in the purchase contract, and/or the requirement for the applicant to prove they paid for the vehicle and the taxes.

62. The provincial government could also consider requiring CBSA clearance before granting PST refunds for the resale of vehicles.

Other changes

63. At an operational level, we propose the following changes that could also have an impact:

- a. The integration of the computer systems of CBSA, local law enforcement and the RCMP, or the facilitation of electronic information sharing such that each agency is aware of the efforts and information of the other, including functionality such that any vehicles identified by a law enforcement agency would be communicated or flagged to CBSA on any customs declarations or manifests. Given the inter-agency cooperation and information sharing agreements currently in place, this system would simply be improving upon existing information sharing rights and methods.
- b. The advancement of certain fraud-prevention efforts, such as moving to an exclusively electronic system for shippers to submit Export Declaration Forms, and movement away from paper forms being permitted.
- c. The publication of that portion of Export Declaration Forms relating to Vehicle Identification Numbers ("VINs"), thereby allowing for law enforcement and creditors to identify the VINs of vehicle that have left Canada, for use as evidence in any charges or and civil litigation.
- d. In conjunction with greater resources being allocated to CBSA, an increase to the rate of physical inspections of containers, which allows for mis-declared cargo (including discrepancies between the actual VIN and Export Declaration Form VIN) to be identified and actioned.

- e. Use of subscriptions or technology services that would allow law enforcement to conduct a national search of lienholders for specific vehicles. National search platforms are in the marketplace and allow a user to submit a single inquiry by VIN that identifies any lienholder registered anywhere in Canada, with complete contact information.
- f. The Canadian Government shift from use of paper forms with watermarks for Canadian work or student visas to a plastic card with embedded security features.
- g. BMW Canada further supports the prohibition of the use of negotiable instruments to pay off manufacturer loans, except where an instrument has sufficient information on it to link it to a specific account at an existing reporting entity, such as at a financial institution. Many of the instruments that are currently used have no identifying information and are used as a tool to conceal the source of funds and identities of the exporters. The creation of a requirement or consensus among all Canadian financial institutions to indicate an account-holder's complete name on any bank drafts, and greater accessibility to wire transferor identity, would assist in this regard.
- h. BMW Canada also asks the Commission to consider recommending that the provincial and federal governments dedicate additional resources to the ports, and to increase the physical presence of law enforcement and other stakeholders. BMW Canada is very appreciative of the collaborative approach and significant efforts of the CBSA and of law enforcement personnel in combatting the problem. However, it is clear that the volume of exports from Canada's ports exceeds the abilities and capacity of current resources to effectively deter the behavior of unauthorized exporters that, as stated in the German Report, is linked to money laundering and organized crime.

AFFIRMED BEFORE ME at Richmond Hill,
Ontario, on March 26, 2021.



A Commissioner for taking Affidavits within Ontario

Laura White
Barrister & Solicitor (ON)
#51611W, Tel. 905-428-4900



NORMAN SHIELDS

This is Exhibit "A" referred to in the Affidavit of
Norman Shields affirmed before me at
Richmond Hill, this 28th day of March 2021



A Commissioner for taking Affidavits
for Ontario

**SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY**

JAN 30 2019

S-191017

No.
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between:

**BMW FINANCIAL SERVICES CANADA a division of
BMW CANADA INC.**

Petitioner

And:

KE ZHANG and JOHN DOE

Respondents

PETITION TO THE COURT

This proceeding has been started by the Petitioner for the relief set out in Part 1 below.

If you intend to respond to this Petition, you or your lawyer must

- (a) file a Response to Petition in Form 67 in the above-named Registry of this Court within the time for Response to Petition described below, and
- (b) serve on the Petitioner
 - (i) 2 copies of the filed Response to Petition, and
 - (ii) 2 copies of each filed Affidavit on which you intend to rely at the hearing.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the Response to Petition within the time for response.

TIME FOR RESPONSE TO PETITION

A Response to Petition must be filed and served on the Petitioner,

- (a) if you reside anywhere within Canada, within 21 days after the date on which a copy of the filed Petition was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed Petition was served on you,

- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed Petition was served on you, or
- (d) if the time for response has been set by order of the Court, within that time.
- (1) The address of the Registry is: 800 Smithe Street, Vancouver, British Columbia.
- (2) The ADDRESS FOR SERVICE of the Petitioner is:
- BMW Financial Services Canada,
a Division of BMW Canada Inc.
c/o LaBelle & Company
Kim Owen LaBelle
Barrister & Solicitor
#1800 – 999 West Hastings Street
Vancouver, BC V6C 2W2
- Fax number address for service (if any) of the Petitioner: 604.684.6004.
- (3) The name and office address of the Petitioner's lawyer is:
- LaBelle & Company
Kim Owen LaBelle
Barrister & Solicitor
#1800 – 999 West Hastings Street
Vancouver, BC V6C 2W2
Telephone: 604.684.6014
File no. 5.0166

PART 1: ORDERS SOUGHT

1. A DECLARATION that the Conditional Sales Agreement entered into between the Respondent, Ke Zhang, as buyer, and The BMW Store, as dealer, which was assigned to the Petitioner, BMW Financial Services Canada, a division of BMW Canada Inc. (the "Petitioner"), and dated January 2, 2019 (the "Sales Agreement"), is a valid and subsisting security interest and charges the Chattel Security identified therein, for the lease of the following security:
- 2019 BMW X5 xDrive 40i Vehicle Identification No. 5UXCR6C56K1K88619
(the "Chattel Security");
2. A DECLARATION that the Respondent, Ke Zhang, has breached the terms of the Sales Agreement and that all monies secured by the Chattel Security are now due and owing to the Petitioner;
3. AN ORDER that the Respondents, or anyone in the possession of the Chattel Security, divulge the location of, and deliver possession of, the said Chattel Security to the Petitioner pursuant to the Petitioner's contractual entitlements and/or pursuant to the provisions of the *Personal Property Security Act*, R.S.B.C. 1996, c. 359;

4. AN ORDER that the Petitioner, or its agents, be at liberty to enter upon any lands or premises, including a residence, commercial compound, or locked parking facility, where the said Chattel Security may be located for the purpose of seizing the Chattel Security;
5. AN ORDER for costs to the Petitioner at Scale B.

PART 2: FACTUAL BASIS

1. The Respondent, Ke Zhang, as buyer, entered into the Conditional Sales Agreement with The BMW Store, as dealer, which was assigned to the Petitioner, and dated January 2, 2019 for the purchase of the following security:
2019 BMW X5 xDrive 40i Vehicle Identification No. 5UXCR6C56KLK88619
(the "Vehicle").
2. The Petitioner registered the security interest relating to the Sales Agreement in the British Columbia Personal Property Registry on January 10, 2019 under base registration no. 2539751 for a term of six years.
3. The Respondent, Ke Zhang, as part of the Sales Agreement, executed a BMW Non-Export Agreement, related to BMW X5 Vehicles (the "Non-Export Agreement").
4. The terms of the Non-Export Agreement included, *inter alia*, the following:
 - (a) The Customer will not, within twelve (12) months of the receipt of the Vehicle...either directly or indirectly, export the vehicle, or permit the Vehicle to be exported, from Canada without the express written consent of BMW Canada;
 - (b) The Customer will not, within twelve (12) months of the receipt of the vehicle...either directly or indirectly, enter into or acquiesce in any agreement whereby the Vehicle is leased or sold for use outside of Canada.
5. The Respondent, John Doe, whose identity is unknown to the Petitioner, and is located at 8100 Capstan Way, Richmond, BC, has taken possession of the Vehicle for the purpose of exporting the Vehicle out of Canada.
6. The Petitioner instructed Surrey Bailiffs, (the "Bailiff"), to confirm the location of the Vehicle.
7. The Bailiff is unable to seize the Vehicle as it is located inside a warehouse at 8100 Capstan Way, Richmond BC.
8. The Petitioner believes it will be unable to seize the Chattel Security without a Court Order and believes that the Vehicle is in danger of export.

9. The Respondent Ke Zhang attempted to pay out the balance owing on the Sales Agreement but the Petitioner refused payment due to its knowledge that the Vehicle was about to be exported from Canada.

PART 3: LEGAL BASIS


1. the Petitioner's contractual entitlement pursuant to the terms of the Sales Agreement and the Non-Export Agreement; and
2. the provisions of the *Personal Property Security Act*, R.S.B.C. 1996, c. 359.

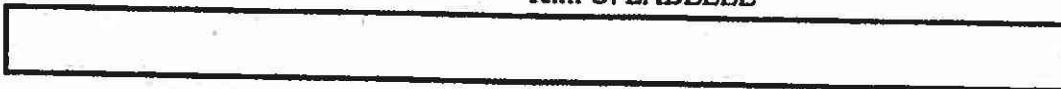
PART 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Katelyn Scott sworn January 30, 2019;
2. Affidavit #1 of Rob Kish sworn January 30, 2019; and
3. The pleadings and proceedings herein.

The Petitioner estimates that the hearing of the Petition will take 5 minutes.

Date: January 30, 2019


Signature of lawyer for Petitioner
Kim O. LABELLE



This is Exhibit "B" referred to in the Affidavit of
Norman Shields affirmed before me at
Richmond Hill, this 26th day of March 2021



A Commissioner for taking Affidavits
for Ontario



SE 19 10 17

Affidavit #1 Robert Kish
sworn January 30, 2019

No.
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between:

**BMW FINANCIAL SERVICES CANADA a division of
BMW CANADA INC.**

Petitioner

And:

KE ZHANG and JOHN DOE

Respondents

AFFIDAVIT

I, Robert Kish, bailiff, of PO Box 75164 Surrey, British Columbia, MAKE OATH AND SAY AS FOLLOWS:


1. I am a licensed bailiff employed by Surrey Bailiffs Ltd., bailiff for the Petitioner herein and as such I have personal knowledge of the facts and matters hereinafter deposed to, save and except where stated to be based upon information and belief, and where so stated I verily believe the same to be true.
2. Surrey Bailiffs Ltd. was retained to act on behalf of BMW Financial Services Canada, a division of BMW Canada Inc. (the "Petitioner") herein.
3. The purpose of my retainer was to locate, for the purposes of seizure, the 2019 BMW X5, which is the subject of this application.
4. I was instructed to attend a location at 8100 Capstan Way, in Richmond, British Columbia, an address obtained through the vehicle's GPS locator.

- 5. At 8100 Capstan Way in Richmond there are a number of small used car dealers and repair shops. The overhead garage door was open on the end unit and I was able to view the contents of the shop.
- 6. The vehicle matching the description of the BMW I was looking for was visible in the back of the shop. No one was in attendance at the front desk or in the shop area.
- 7. I entered the shop and checked the serial number and verified that it was the BMW X5 I was instructed to seize.
- 8. The subject BMW was unlicensed and blocked in by several other unlicensed late model luxury cars.
- 9. I would be unable to move the vehicle from its present location and would need the co-operation, or at least the acquiescence of the operator of the shop.
- 10. I am of the opinion that I will be unable to seize the subject BMW without a court order.

SWORN BEFORE ME at the City of)
 Vancouver, in the Province of British)
 Columbia, this 30th day of January, 2019.)



 ROBERT KISH



 A Commissioner for taking Affidavits
 for the Province of British Columbia

Kim O. LaBelle
Barrister & Solicitor
 1800 - 999 West Hastings Street
 Vancouver, BC V6C 2W2

This is Exhibit "C" referred to in the Affidavit of
Norman Shields affirmed before me at
Richmond Hill, this 26th day of March 2021



A Commissioner for taking Affidavits
for Ontario



S-191017
Affidavit #1 of Katelyn Scott
sworn January 30, 2019

No.
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between:

**BMW FINANCIAL SERVICES CANADA a division of
BMW CANADA INC.**

Petitioner

And:

KE ZHANG and JOHN DOE

Respondents

AFFIDAVIT

I, KATELYN SCOTT, Legal Secretary, of 1800 – 999 West Hastings Street, in the City of Vancouver, in the Province of British Columbia, MAKE OATH AND SAY AS FOLLOWS:

1. I am a Legal Secretary assisting Kim Owen LaBelle, Barrister and Solicitor, the principal lawyer of LaBelle & Company, counsel for the Petitioner, BMW Financial Services Canada, a division of BMW Canada Inc. (the "Petitioner") herein, and as such have personal knowledge of the facts and matters hereinafter deposed to, save and except where stated to be based upon information and belief, and where so stated I verily believe the same to be true.
2. I have reviewed the file herein and, in particular, the sale documents regarding the 2019 BMW X5 Vehicle which is the subject of this application.
3. The Respondent, Ke Zhang, as buyer, entered into the Conditional Sales Agreement with The BMW Store, as dealer, which was assigned to the Petitioner, and dated January 2, 2019 for the purchase of the following security:
2019 BMW X5 xDrive 40
Vehicle Identification No. 5UXCR6C56KLLK88619
the "Vehicle").

Attached and marked Exhibit A hereto is a true copy of the Conditional Sales Agreement between Ke Zhang and The BMW Store referred to herein.

4. The Petitioner registered the security interest relating to the Sales Agreement in the British Columbia Personal Property Registry on January 10, 2019 under base registration no. 2539751 for a term of six years. Attached and marked Exhibit B hereto is a true copy of the PPSA lien referred to herein.
5. The Respondent, Ke Zhang, executed as part of the Sales Agreement, a BMW Non-Export Agreement, related to the BMW X5 Vehicle (the "Non-Export Agreement"). Attached as Exhibit C hereto is a true copy of the Non-Export Agreement executed by the Respondent.
6. The terms of the Non-Export Agreement included, *inter alia*, the following:
 - (a) The Customer will not, within twelve (12) months of the receipt of the Vehicle...either directly or indirectly, export the vehicle, or permit the Vehicle to be exported, from Canada without the express written consent of BMW Canada;
 - (b) The Customer will not, within twelve (12) months of the receipt of the vehicle....either directly or indirectly, enter into or acquiesce in any agreement whereby the Vehicle is leased or sold for use outside of Canada.
7. We have been advised by the Petitioner that the Respondent, John Doe, whose identity is unknown to the Petitioner, and is located at 8100 Capstan Way, Richmond, BC, has taken possession of the Vehicle for the purpose of exporting the Vehicle out of Canada.
8. We have been advised that the Petitioner instructed Surrey Bailiffs, (the "Bailiff"), to confirm the location of the Vehicle for the purpose of seizing the Vehicle.
9. The Petitioner has advised us that the Bailiff is unable to seize the Vehicle as it is located inside an auto shop at 8100 Capstan Way, Richmond BC.
10. The Petitioner has advised us that it believes it will be unable to seize the Chattel Security without a Court Order and believes that the Vehicle is in danger of export.

- 11. We have been advised by the Petitioner that the Respondent Ke Zhang attempted to pay out the balance owing on the Sales Agreement but the Petitioner refused payment due to its knowledge that the Vehicle was about to be exported from Canada.

SWORN BEFORE ME at the City of
 Vancouver, in the Province of British
 Columbia, this 30TH day of January, 2019.



 KATELYN SCOTT



 A Commissioner for taking Affidavits
 for the Province of British Columbia

Kim O. LaBelle
Barrister & Solicitor
 1800 - 999 West Hastings Street
 Vancouver, BC V6C 2W2

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This is Exhibit A referred to in the
Affidavit of Katelyn Scott
sworn (or affirmed) before me at
Vancouver, B.C.
this 30 day of January 2019
K. J. [Signature]
A Commissioner/Notary Public for the
Province of British Columbia



1.1

BMW Financial Services Canada

CONDITIONAL SALES AGREEMENT

Date of Contract (MM/DD/YYYY): 01/02/2019		Reference Number: 11983501	
Buyer (Name and Address): Ke Zhang 9303 124 St Surrey, BC V3V4S2 Date of Birth (MM/DD/YYYY): 11/06/1978		Buyer (Name and Address): Date of Birth (MM/DD/YYYY):	
Retailer (Name and Address): The BMW Store 2040 Burrard St Vancouver BC V6J3H5		Assignee: BMW FINANCIAL SERVICES CANADA, A DIVISION OF BMW CANADA INC. 50 ULTIMATE DRIVE, RICHMOND HILL, ONTARIO L4S 0C8 FOR BMW CALL: 1-800-3000-BMW Business NO.: 879929594 RT0001	
Business NO.:			

In this Agreement, the words "you", "your" and "Buyer" mean each person named above as a Buyer. The words "Merchant", "we", "us" and "ours" refer to the Retailer named above, before assignment of this Agreement, and to BMW Financial Services Canada, a division of BMW Canada Inc. ("BMW"), after assignment of the Retailer's rights under this Agreement. You agree to purchase the vehicle described below and all additional equipment and other attachments and accessories to it (the "Vehicle") from us on the terms set forth in this Agreement. You understand that the Retailer intends to assign the Vehicle, this Agreement and all payments under it, and the benefits of any agreements relating to insurance, manufacturer extended warranties or manufacturer maintenance packages to BMW. The primary use of the Vehicle is indicated in the Vehicle Description below. You acknowledge that you have received the Vehicle and it is in good condition.

VEHICLE DESCRIPTION

New or Pre-owned New	Year 2019	Make/Model/Trim BMW X5 xDrive40i	No. of Cylinders 6
Licence No.	Body Type Sports Activity Vehicle		Colour NOT DEFINED
Vehicle Identification Number 5UXCR6C56KLK88619		Odometer Reading (KMs) 90	
<input checked="" type="checkbox"/> For Personal, Family or Household Use		<input type="checkbox"/> For Business Use	

SCHEDULE OF PAYMENT TERMS SUMMARY

No. of Payments 60	Monthly Payment \$ 901.22	Payment Due On The 2	Payments Starting On 02/02/2019
Scheduled Final Payment Date 01/02/2024	Balance of the Amount Financed (due on Scheduled Final Payment Date) \$ 0.00	Total of all Payments \$ 54,073.20	



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1. PRICE OF VEHICLE, SERVICES AND TAXES

a) Vehicle Price (includes additional equipment and other attachments and accessories, freight, administration fees, applicable taxes and pre-delivery inspections, but excludes GST/HST and PST)	\$	<u>71,185.00</u>
b) Optional Maintenance Package	+	\$ <u>0.00</u>
c) Optional Extended Warranty	+	\$ <u>0.00</u>
d) Optional Credit Life and Disability Insurance	+	\$ <u>0.00</u>
e) Optional Tire and Rim Protection	+	\$ <u>0.00</u>
f) Optional Appearance Protection	+	\$ <u>0.00</u>
g) Optional Manufacturer Product	+	\$ <u>0.00</u>
h) Optional Manufacturer Product	+	\$ <u>0.00</u>
i) Optional Manufacturer Product	+	\$ <u>0.00</u>
j) Other Optional Products or Services <u>180 ADVANCED DISPOSAL FEE (w/out spare tire)</u>	+	\$ <u>120.00</u>
k) Administrative or other fees (relating to financing) not paid by cash customers	+	\$ <u>0.00</u>
l) GST/HST (as applicable, inclusive of any tax reductions allowed for a trade-in in 2(b))	+	\$ <u>3,567.62</u>
m) PST (as applicable)	+	\$ <u>7,135.24</u>
n) Total Price after Taxes	=	\$ <u>82,007.86</u>

2. AMOUNTS DUE UPON SIGNING

a) Cash Down Payment (to be applied against 1(a))	\$	<u>32,952.59</u>
b) Trade-in:		
Year	_____	
Make/Model	_____	
Vehicle Identification Number	_____	
Odometer Reading	<u>0</u> _____	kms
List of Liens and Encumbrances		
i) Trade-in Allowance	\$	<u>0.00</u>
ii) Total Liens and Encumbrances	\$	<u>0.00</u>
iii) Net Trade-in Allowance (no less than \$0, to be applied against 1(a))	+	\$ <u>0.00</u>
c) Licence Fees	+	\$ <u>0.00</u>
d) Vehicle Registration Fees	+	\$ <u>0.00</u>
e) Security Registration Fees	+	\$ <u>47.41</u>
f) Total Due Upon Signing	=	\$ <u>33,000.00</u>

3. AMOUNT FINANCED

a) Outstanding Balance of any Refinanced Prior Loans	\$	<u>0.00</u>
b) Insurance Premiums Paid on Your Behalf	\$	<u>0.00</u>
c) Amount Financed excluding Options/Taxes (1(a)+1(k)-2(a)-2(b)(iii)+3(a)+3(b))	\$	<u>38,232.41</u>
d) Amount Financed (1(n)-2(a)-2(b)(iii)+3(a)+3(b))	\$	<u>49,055.27</u>

4. INTEREST RATE AND CHARGES

a) Interest Rate as a percent per annum		<u>3.90 %</u>
b) Interest Charges over Term of Contract	\$	<u>5,017.93</u>
c) Term of Contract		<u>60</u>

5. ADDITIONAL DISCLOSURE

a) Total Obligation over Term (lines 3(d)+4(b))	\$	<u>54,073.20</u>
b) Rebates available only to cash customers, plus tax	\$	<u>0.00</u>
c) Cash Price of Vehicle (1(a)-5(b))	\$	<u>71,185.00</u>



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d) Cash Price less Cash Down (5(c)-2(a)-2(b)(iii))	\$	38,232.41
e) Value Given by you (2(f))	\$	33,000.00
f) Value Received by you (1(n)+3(a)-5(b))	\$	82,007.86
g) Cost of Borrowing (1(k)+4(b)+5(b))	\$	5,017.93
h) Annual Percentage Rate		4.03%

6. SCHEDULE OF PAYMENTS:

You agree to pay the Total Obligation Over Term of Agreement, which is the Amount Financed shown on line 3(d) together with Total Interest shown on line 4(b) at the rate shown on line 4(a), in 60 payments of \$ 901.22 each, on the 2 day of each month starting 02/02/2019 until 01/02/2024 (the "Scheduled Final Payment Date"), on which date you will also pay the balance of the Amount Financed, which will be \$ 0.00. The total of all payments is \$ 54,073.20. Interest begins to accrue on 01/02/2019. The amortization period for this is 60 months. Payments will be applied first to accrued and unpaid interest, then to unpaid Amount Financed, then to any other amounts due under this Agreement.

7. LIABILITY OF BUYERS:

If more than one person or company signs this Agreement as a Buyer, then you are each individually and collectively liable for the payment of all amounts and the performance of all obligations required of you under this Agreement and each of you carries the same obligations under this Agreement as principals.

8. PAYMENTS UNDER THIS AGREEMENT:

To the extent permitted by law, you shall make all payments under this Agreement to us without set-off, deduction or counterclaim. You are entitled to fully or partially prepay the outstanding balance owing under this Agreement at any time.

9. LATE PAYMENTS, NSF CHARGES & INTEREST:

If you fail to make a payment when it is due or if any payment is returned unpaid due to insufficient funds or failure to process, then you shall be liable to pay us: (i) all reasonable charges and costs incurred by us as a result of such default, including "NSF" charges and legal costs and the amount of \$50 per item handled, plus all applicable taxes on such fee for our overhead in handling, and (ii) interest at a rate of 18% per year, both before and after judgment, on the outstanding payment, fees and accrued but unpaid interest, not as a penalty but as a genuine pre-estimate of our reasonable costs incurred attempting to collect the late payment, until we receive from you the late payment, interest and all other amounts owing under this Section.

10. RESERVATION OF OWNERSHIP:

You agree that we will remain the legal owner of the Vehicle until you pay all amounts owing under this Agreement and you hereby grant us a security interest in the Vehicle as security for the payment and performance of all of your obligations to us under or in connection with this Agreement.

11. LICENCE, REGISTRATION AND TAXES:

You will promptly pay all charges imposed by any governmental authority during the term of this Agreement for transfer of title, registration, licensing, testing and inspecting of the Vehicle. You must pay all taxes related to this Agreement or the Vehicle which are levied upon you or the Vehicle.

12. VEHICLE INSURANCE:

At all times during the term of this Agreement, you shall, at your own cost, insure the Vehicle under a government regulated motor vehicle insurance policy issued by an insurer that must be acceptable to us, acting reasonably, and licensed in the province or territory where the Vehicle is primarily used, providing insurance coverage against: (a) all risks of physical loss or damage, including loss by fire (including extended coverage), theft, collision and other risks of loss as are customarily covered by Vehicle insurance for an amount and against the risks that we require but in no event shall the insurance be less than the balance due under this Agreement, and (b) public liability and property damage insurance

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for the use, operation and possession of the Vehicle of not less than \$1,000,000.00 per occurrence or such greater liability amount as stipulated by us; and (c) the maximum deductible will not exceed \$1,000 (if the Vehicle is a motorcycle) or \$2,500 (if the Vehicle is not a motorcycle); and (d) such insurance shall be in such form with such limits of liability as we may reasonably require (collectively the "Insurance").

You shall provide proof of insurance to us prior to taking delivery of the Vehicle and to us or our service provider at least annually, and whenever else we ask you to do so. The Insurance shall name us as additional named insured and as first loss payee and all monies paid under the Insurance shall be made directly to us. We may apply the monies paid under the Insurance to any amount that you owe under this Agreement, whether or not an amount is then due. The Insurance must provide that you and we shall be given at least thirty (30) days prior written notice if the Insurance is to be cancelled, permitted to lapse or coverage is to be reduced, and that no act or omission by you shall reduce our rights under the Insurance. You shall comply with all terms and conditions of the Insurance at all times during the term of this Agreement. You shall cooperate with us and your insurer in defending any claims or actions resulting from the operation or use of the Vehicle. You appoint and constitute us as your true and lawful attorney, from time to time, and at our sole discretion, with full power of substitution, and with full power and authority to, on your behalf, make or pursue any insurance claim against your insurer of any damage or loss to the Vehicle and to settle, resolve or litigate any claim on your behalf and execute and deliver any and all documents necessary, advisable or ancillary to obtain the purposes described above. In the settlement of any loss you authorize us to complete on your behalf any document required by the insurer and authorize us to endorse on your behalf any cheque made out to your name for indemnity, premiums or otherwise. You also assigned to us any premium reimbursement and/or any insurance indemnity paid under the Insurance.

13. LOSS, THEFT AND DESTRUCTION:

To the extent permitted by law, your obligations under this Agreement will remain in force even if the Vehicle is lost or stolen (and not recovered) or is, in our opinion or the opinion of the Insurance carrier, destroyed or rendered uneconomically repairable. If such event occurs and if you receive an insurance settlement, then you must pay us the insurance proceeds plus, if required by us, the balance of the Amount Financed, the accumulated interest and any other amounts owing under this Agreement. If you have not maintained the required Insurance and/or the Merchant does not receive a full insurance settlement, then you must pay the balance of the Amount Financed, the accumulated credit charges owing and any other amounts owing under this Agreement to the Merchant.

14. USE OF VEHICLE:

You promise to use the Vehicle for personal, family or household purposes, or for business purposes, as indicated on the front of this Agreement. You shall not do any of the following: a) use or permit the use of the Vehicle for (i) any illegal or improper purpose; (ii) commercially as a rental car, taxicab, public bus, ambulance, funeral vehicle, limousine, driver training vehicle, sightseeing vehicle, or courier, or racing vehicle or for the purpose of carrying goods or passengers for a fee; or (iii) in any manner that would cause the Insurance to be suspended, cancelled, permitted to lapse or otherwise rendered inapplicable; b) tamper with the odometer or permit any other person to tamper with the odometer so as to alter the record of the actual kilometres traveled by the Vehicle; or c) make any changes to the Vehicle (such as adding, removing or modifying any equipment, attachments, accessories or parts) without our prior written consent. All changes, modifications or accessions to the Vehicle which cannot be removed or modified without decreasing the Vehicle's economic value or functional utility shall automatically become our property at any time that we seize the Vehicle. If we choose to remove or modify any changes made to the Vehicle, you shall be responsible to fully reimburse us for the cost of such removal or modification.

15. FINES, TICKETS, LIENS AND ENCUMBRANCES:

You must keep the Vehicle free from all fines, liens, encumbrances, seizure, confiscation or forfeiture. You must also pay or cause to be paid all fines, tolls, and tickets imposed on the Vehicle or its driver. If you do not, the Merchant may (but shall not be obligated) pay any fines, tolls, tickets, and/or any other amounts to remove liens or encumbrances or to obtain a release from any seizure, confiscation or forfeiture on your behalf. You must fully reimburse the Merchant for any such amount, including reasonable legal fees on a solicitor to client basis.



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16. MAINTENANCE, REPAIRS AND OPERATING EXPENSES:

You shall, at your own cost, maintain service and repair the Vehicle and keep it in good working order and condition. We or our assignees may inspect the Vehicle at any reasonable time and place and, when requested by us or anyone on our behalf, you must advise of the Vehicle's location and allow the inspection. If you do not maintain service or repair the Vehicle, keep it in good working order and condition or pay the Vehicle operating expenses, we may choose to do so on your behalf. If we do, then you must fully reimburse us on demand for all amounts paid and for all costs incurred by us. If the Vehicle sustains any physical damage that is not a result of normal wear and use, including as a result of a collision or accident, then you promise to cause the Vehicle to be repaired to its pre-damage condition. All repairs must be made with genuine manufacturer's original equipment replacement parts. All maintenance service must be performed by a duly qualified technician and in accordance with the manufacturer recommendations in the Owner's Manual and the Maintenance Schedule folder that comes with the Vehicle and also as the manufacturer requests in any recall campaign, so as to keep the manufacturer's warranty in effect. You shall obtain and maintain, and provide to us promptly on demand, mechanical reports of all repairs, service, or maintenance done on the Vehicle by someone other than a Merchant's authorized technician. Additionally, you will immediately notify us of any deployment, refurbishment or deactivation of the Vehicle's airbags.

17. MATTERS REQUIRING NOTICE OR CONSENT:

You promise to notify us before you change your name, address or residency. You promise not to remove the Vehicle from the province or territory where the Vehicle was first registered or from Canada for a period of more than thirty (30) days without (i) obtaining our prior written consent, (ii) executing any documents which may be required by us and (iii) continuing to insure the Vehicle as may be required by us. You promise that you will not sell, lease or give up possession of the Vehicle or your interest in it without first getting our prior written consent. You promise that you will immediately, in writing, notify us if the Vehicle is lost, stolen, destroyed, damaged or involved in any accident. You promise not to remove or export or attempt to remove or export the Vehicle from Canada or cease to be permanent resident of Canada.

18. TRANSFER OF VEHICLE:

You agree to the transfer, without notice to you and without your consent, of this Agreement, all payments to be made under this Agreement together with any rights in the Vehicle by the Retailer to the Merchant as well as any subsequent transfer and assignment by the Merchant to any entity.

19. DEFAULT:

a) What Constitutes a Default? You will be in default under this Agreement if any of the following occurs: i) you fail to keep any promise you made or otherwise fail to comply with any terms of this Agreement; ii) you are, or any of your property or the Vehicle is, subject to a proceeding in bankruptcy, receivership or insolvency; iii) you make an assignment or proposal for the benefit of creditors or any of your creditors or their agents seize any of your property; iv) any person or governmental authority confiscates, seizes, or forfeits the Vehicle; v) you default under any other contracts or agreement with us or any one of our related or affiliated companies and/or their respective successors or assignees (this provision is not applicable if you are a Consumer); vi) you provided false or misleading information in your application for this Agreement; vii) the Vehicle is lost, stolen, abandoned, destroyed or (in our opinion or the opinion of your Insurance carrier) rendered not economically repairable; viii) you sell, remove or export the Vehicle from Canada or you attempt to do so; ix) you transfer, lease, rent or assign this Agreement, the Vehicle or your right to use the Vehicle, or attempt to do so, without our prior written consent; x) you in any way advertise the Vehicle for sale, rent, lease, sublease or exchange, or attempt to do so, without the prior written consent of the Merchant; xi) if you are a corporation and you are dissolved, amalgamated or wound-up; xii) we believe in good faith that the prospect for payment or performance by you of this Agreement is impaired or that the Vehicle is or is about to be placed in jeopardy; or xiii) anything else has happened that affects in a negative way your ability to fulfill your obligations under this Agreement.

b) Our Rights if you are in Default. If you are in default under this Agreement, we may, subject to any notice requirements, cure periods or other restrictions under applicable law, do any or all of the following: i) take possession of all or any part of the Vehicle without demand, wherever it is, and store, sell or lease it;



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ii) accelerate the amounts due under this Agreement so that all outstanding principal, interest, fees and other amounts are due and payable immediately; iii) sue you or your estate for any amount that you owe; iv) cancel any Insurance or other optional products or services purchased under this Agreement and retain any premium refund (and you authorize and instruct all insurers or obligors to pay any such amounts directly to us); and v) exercise any other rights we may have at law.

All remedies available to us are cumulative and not alternative and may be exercised separately or together, in any order or combination. We may apply sale or lease proceeds to the amount that you owe, including the expenses mentioned in Section 21, and you must pay us any amount still owing. Upon the occurrence of any default pursuant to subsection 19(a)(vii) you shall also be required to promptly pay or remit to us any and all Insurance proceeds received by you directly. For the purpose of taking the Vehicle from you, we (or anyone on our behalf) may enter any premises where the Vehicle is kept and remove the Vehicle, and in doing so, may use such force as the circumstances may require without liability for any damages or costs resulting from such entry or from taking possession of the Vehicle and you agree to indemnify us with respect to any damage to third parties.

If there is any personal property in the Vehicle when we claim the Vehicle, you irrevocably authorize us to take possession of such property and to store it for you for a reasonable period of time. We shall not be liable to you regardless of whether such property is lost, stolen or damaged while in storage and you waive any rights you may have to assert any such claims against us to the fullest extent permissible by law. You may reclaim the personal property from us at any time by payment in full of all storage charges and other costs and expenses that we have reasonably incurred in dealing with the personal property.

20. WARRANTIES:

Subject to applicable law, the only warranties which apply to the Vehicle are the manufacturer's warranties, which are delivered to you with maintenance packages which you may have purchased. Except as required by law, the Merchant is not offering, and there are no other warranties, including warranties as to merchantability, suitability or fitness for a particular purpose in respect of the Vehicle (whether express, implied, or otherwise), relating to this Agreement or the new or pre owned Vehicle. Neither the Retailer nor any of its employees are authorized to change the text of this Agreement or to make any oral or written promise, warranty or representation to you other than those which are actually set out in this Agreement. You acknowledge that the Merchant is not the supplier of the optional services set out in Section 1 on the front page of this Agreement, unless the name "BMW Canada" appears in the contract you purchased. You have chosen these third party products and the Merchant makes no warranty to you about these third party products and services.

21. REIMBURSEMENT:

To the extent permitted by law, you must immediately pay to us all amounts when due under this Agreement along with any related expenses, including, without limitation, any costs and/or expenses incurred by us as a result of any failure by you to comply with this Agreement, or otherwise paid by us under this Agreement. You must also immediately pay us all other expenses, including reasonable legal expenses on a solicitor to client basis, paid by us in exercising our rights under this Agreement, together with our fees and all costs of preparing a discharge of, or amendment to, this Agreement.

22. INDEMNIFICATION, SET-OFF, PAYMENT OF ADDITIONAL AMOUNTS:

Whether or not the Insurance is in place, you must indemnify us promptly on demand in respect of all expenses, losses, damages, injuries, claims and demands which are in any way connected with the Vehicle, your possession and use of the Vehicle, or its operation or arising out of or relating to this Agreement. You agree that except as expressly authorized by law, the amounts due under this Agreement shall not be subject to any defence or set off or counter claim by you for any reason at all (including, for example, in connection with any disputes or claims that you or anyone else might have against the manufacturer, us or any third party in connection with the Vehicle, this Agreement or the manufacturer's warranty).

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23. ASSIST TECHNOLOGY:

If the Vehicle is equipped with a wireless device, global positioning system satellite receiver or other technology capable of tracking the location of the Vehicle and providing information or services in connection with such tracking, together with any supplemental or related equipment or software (the "Assist Technology"), then, in addition to any other restrictions on your use of the Assist Technology set out in other agreements, you shall not, and shall not attempt to: a) sell, rent, lease, sublicense, lend, assign, publish or time-share the Assist Technology, or any component thereof; b) reverse engineer, decompile or disassemble the Assist Technology or any component thereof; c) circumvent any technological measure(s) that control access to or use of the Assist Technology; d) alter, remove or obscure any patent, copyright, trademark or proprietary rights notices contained in or affixed to the Assist Technology; e) unbundle individual or component parts of the Assist Technology; f) use, incorporate, modify, distribute, provide access to, or combine any software component of the Assist Technology in a manner that would subject that software or any part of it to open source licence terms; or g) cause or assist any third party in doing any of the foregoing.

24. VEHICLE TRACKING DURING DEFAULT:

If the Vehicle is equipped with Assist Technology, you consent to our use of such devices and systems to track the location and movement of the Vehicle at any time when we, in our sole discretion, consider you to be in default under this Agreement and for a period of two (2) weeks after any such default has been cured. You represent and warrant that the principal driver(s) of the Vehicle have been informed of the possibility that we will track the location and movement of the Vehicle and have consented to the collection of their personal information for the purposes outlined above.

25. CREDIT INVESTIGATION AND FINANCING STATEMENTS:

You consent to a credit investigation and the exchange of credit information concerning your personal credit history for as long as any of your obligations is outstanding under this Agreement. You agree that we may register a financing statement confirming our interest in the Vehicle, to the extent that any such interest exists. We may register any financing or financing change statement made in connection with this Agreement for a period up to the Term of this Agreement plus one year. Where the law permits, you waive your rights to sign or receive a copy of any financing, financing change or verification or confirmation statement in connection with this Agreement. If this Agreement is subject to the laws of Ontario or Alberta, you agree that copies of any documents which are required to be sent to you pursuant to the personal property security laws of either Province may be sent by ordinary mail.

26. PRIVACY STATEMENT:

You consent and acknowledge that the Merchant, its affiliates, retailers and service providers may collect, use or disclose your personal information for the purposes of: a) maintaining warranty and vehicle service records, b) assisting in service campaigns, c) evaluating credit worthiness during the term of this Agreement, d) exchanging banking information, e) assigning the Agreement to third persons including for securitization purposes, f) management and administration of the Agreement, g) collection, lien registration, insurance tracking, insurance or claim settlement and h) for any legal and related business purposes. In accordance with the Merchant's privacy policy, your personal information may be disclosed, processed and stored outside of Canada and therefore may be available to government authorities under lawful orders and laws applicable in said jurisdiction. You agree and acknowledge that your personal information may be transferred to a third party in the event this Agreement is transferred to a third party by the Merchant in the context of a sale, business transaction which includes, without limitation, securitization of the Merchant's agreements.

27. OPTIONAL PROTECTION AND INSURANCE PRODUCTS CANCELLATION:

If provided by the Merchant or its associates, you may cancel all optional insurance products or services of a continuing nature upon thirty (30) days prior written notice to the Merchant, or such shorter period as provided in the agreement under which that service is provided. Any refund due to you arising from the cancellation or termination of any optional protection and insurance products purchased hereunder and not paid for in advance or upon signing this Agreement will be applied by the Merchant to the remaining Payments, adjusted on a prorated basis.

2C



8

BMW Financial Services
Canada

28. WAIVER - SASKATCHEWAN:

If you are a corporation, you agree that the Limitations of Civil Rights Act (Saskatchewan) has no application to this Agreement or to the rights, powers or remedies of us.

29. IMPORTANT INFORMATION RESPECTING MOTOR VEHICLE SALE - ONTARIO:

In case of any concerns with this Agreement, you should first contact your motor vehicle dealer. If concerns persist, you may contact the Ontario Motor Vehicle Industry Council as the administrative authority designated for administering the Motor Vehicle Dealers Act, 2002. You may be eligible for compensation from the Motor Vehicle Dealers Compensation Fund if you suffer a financial loss from this trade and if your motor vehicle dealer is unable or unwilling to make good on the loss. You may have additional rights at law.

30. CANADIAN MOTOR VEHICLE ARBITRATION PLAN NOT AVAILABLE:

The manufacturer of this vehicle is not a participant in the Canadian Motor Vehicle Arbitration Plan. Therefore, the program under that Plan is not available to resolve disputes concerning alleged manufacturer's defects or implementation of the manufacturer's new motor vehicle warranty.

31. SAFETY STANDARDS CERTIFICATE:

A safety standards certificate is only an indication that the motor vehicle met certain basic standards of vehicle safety on the date of inspection.

32. MISCELLANEOUS OTHER TERMS:

This Agreement creates a purchase money security interest for your obligations under this Agreement and our security interest in the Vehicle extends to all proceeds, replacement parts, accessories and accessions to the Vehicle. If a court finds any provision or any part of this Agreement prohibited by law or unenforceable, the provision or part shall be ineffective only to the extent so prohibited or held unenforceable without affecting any other provision of this Agreement. This Agreement is governed by the laws of the province or territory where the Retailer is located. If we should fail or delay in strictly enforcing any provision of this Agreement, that shall not affect our rights under that provision or any other provision of this Agreement. If we allow you to breach this Agreement on any occasion, this does not entitle you to breach it again on another occasion. No waiver under this Agreement shall be binding against us unless we agreed to by us in writing. This Agreement shall bind you, your heirs, legal representatives, successors and permitted assigns. Any failure by you to do what this Agreement requires in the time specified in this Agreement is a breach of this Agreement.

33. ENTIRE AGREEMENT:

This Agreement, any insurance declaration and any bill of sale which you shall sign at the time that you receive delivery of the Vehicle sets out all rights, agreements and obligations between you and us. You agree that any other understandings or agreements which you believe have been reached, and any representations or promise which may have been made to you by us which are not expressly set out in this Agreement, are of no legal effect. A change to the terms of this Agreement has no legal effect unless it is in writing and is signed by you and us.

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BMW Financial Services Canada

SIGNATURES AND IMPORTANT NOTICE

READ THIS AGREEMENT BEFORE SIGNING IT.
NOTICE TO YOU: SALES FINAL Please review the entire Agreement, including all attached statements, before signing. This Agreement is final and binding once you have signed unless the Retailer has failed to comply with certain legal obligations. The Retailer must give you a fully completed copy of this Agreement to sign. Do not sign this Agreement until you have read it, if any blank space is not fully completed and/or there are any terms that you do not understand. By signing this Agreement, you, the Retailer, and the Merchant agree that you are purchasing the Vehicle under the terms and conditions set out in this entire Agreement, and you acknowledge having received, read and understood this Agreement and all its contents.

YOU SIGNED THIS AGREEMENT AND RECEIVED A COMPLETED COPY ON: 01/02/2019

BUYER NAME: Ke Zhang (PLEASE PRINT) BUYER NAME: _____ (PLEASE PRINT)
 SIGNATURE: X [Signature] SIGNATURE: X _____

RETAILER SIGNATURE AND ASSIGNMENT

The Retailer accepts this Agreement, and assigns all its rights, title and interest in it and the Vehicle to the Merchant under the terms and conditions of the Retailer Finance Agreement between the Retailer and the Merchant as such agreement may be amended, supplemented or replaced from time to time. The Retailer represents and warrants that it is transferring its right, title and interest in this Agreement and the Vehicle free and clear of all prior claims, liens, encumbrances, hypothecs or other security interests created by or through the Retailer or any previous owner of the Vehicle, except for this Agreement, and that the Vehicle is fully covered under the plan(s) set out in the warranties described above, which remain(s) valid and subsisting for the Vehicle until the expiry date(s) or odometer reading(s) corresponding to each plan.

The Retailer warrants to the Merchant and its assigns that Retailer has provided each Buyer all information Retailer is required to provide under the laws where this Agreement was executed by each Buyer. The Retailer agrees to indemnify and hold harmless the Merchant and its assigns from and against any and all losses, expenses, claims, liability and damages arising from claims, complaints, or other actions related in whole or in part, to Retailer's failure to provide any such required disclosures.

DATE OF ASSIGNMENT: _____
 RETAILER NAME: The BMW Store (PLEASE PRINT) BY: BRIAN CHENG (PLEASE PRINT)
 SIGNATURE: X [Signature] TITLE F&M REG NO: _____

RECOURSE

RETAILER NAME: The BMW Store (PLEASE PRINT) BY: _____ (PLEASE PRINT)
 SIGNATURE: X _____ TITLE _____

I have the authority to bind the above company with my sole signature. If the person(s) named above as buyer(s) default(s) under this Agreement and the box marked "RECOURSE" is checked and signed by the Retailer, the Retailer agrees to repurchase this Agreement and the Merchant's interest in the Vehicle in accordance with the terms of the Retailer Finance Agreement.

Personal Property Registry

Search Results

For: [PA84933] [K.OWEN LABELLE LAW CORPORATION]

Jan 29, 2019

09:20:00 PM

10

Folio: 5.0166

Serial Number: 5UXCR6C56KLK88619

Local Print Limit: 200

RSR017 - PRESS APPROPRIATE BUTTON TO PAGE FORWARD

***** P P S A S E C U R I T Y A G R E E M E N T *****

Reg. Date: JAN 10, 2019

Reg. Length: 6 YEARS

Reg. Time: 06:39:44

Expiry Date: JAN 10, 2025

Base Reg. #: 253975L

Control #: D5787393

Block#

S0001 Secured Party: BMW CANADA INC
50 ULTIMATE DRIVE
RICHMOND HILL ON L4S 0C8

D0001 Base Debtor: ZHANG KE
(Individual) 9303 124 ST
SURREY BC V3V 4S2

Birthdate: 78NOV06

This is Exhibit "B" referred to in the
Affidavit of Kate Lynn Scott
sworn (or affirmed) before me at

Vancouver B.C.
this 30 day of January 2019

[Signature]
A Commissioner/Notary Public for the
Province of British Columbia

Personal Property Registry

Search Results

For: [PA84933] [K.OWEN LABELLE LAW CORPORATION]

Jan 29, 2019

09:20:14 PM

Folio: 5.0168

Serial Number: 5UXCR6C56KLK88619

Local Print Limit: 200

RSR007 - NO MORE INFORMATION TO DISPLAY

Vehicle Collateral:

Type	Serial #	Year	Make/Model	MH Reg.#
V0001 MV	5UXCR6C56KLK88619	2019	BMW X5 XDRIVE40I	
Registering Party: BMW CANADA INC 50 ULTIMATE DRIVE RICHMOND HILL ON L4S 0C8				

BMW NON-EXPORT AGREEMENT
BMW SERVICES

This agreement and the Consumer Fraud Notice set forth below are necessary to address the issues of fraud that may arise concerning the sale of BMW vehicles in Canada. BMW Canada is doing this to protect such fraud for the benefit of valued customers. An authorized BMW retailer and I:

CONSUMER FRAUD NOTICE


ATTENTION BMW CANADA CUSTOMER

BMW CANADA AND THE CANADIAN AUTHORITIES ARE AWARE THAT CERTAIN ENTITIES, ORGANIZED CRIME GROUPS, AND CRIMINAL MONEY LAUNDERERS WILL PURCHASE BMW VEHICLES IN CANADA FOR EXPORT. THIS VIOLATES OUR AGREEMENTS WITH OUR CUSTOMERS AND YOU MAY VIOLATE CANADIAN LAW.

IN ORDER TO AVOID DETECTION, CERTAIN INDIVIDUALS, ENTITIES, ORGANIZED CRIME GROUPS, AND CRIMINAL MONEY LAUNDERERS MAY OFFER TO PROVIDE INDIVIDUALS WITH CASH UP-FRONT TO PURCHASE, LEASE OR FINANCE A VEHICLE IN CANADA.

DO NOT BE DUPED. IF YOU PURCHASE A VEHICLE AS PART OF ONE OF THESE SCHEMES IN VIOLATION OF OUR AGREEMENTS, ANTI-MONEY LAUNDERING LAWS, OR OTHER CRIMINAL LAWS, BMW CANADA WILL PURSUE ALL OF ITS REMEDIES AGAINST YOU AND WILL NOTIFY CANADIAN AUTHORITIES, INCLUDING (AMONG OTHERS) POLICE SERVICES, THE CANADIAN REVENUE AGENCY AND/OR THE CANADIAN BORDER SERVICES AGENCY.

Please read the BMW Canada Export Agreement carefully.

I HAVE READ AND UNDERSTOOD THIS NOTICE.  Customer Initials

WHEREAS the undersigned is the owner of customer's vehicle and is the authorized dealer for the following vehicle: vehicle identification number: BMW Retail Centre

Model: 3 Series Year: 2015 VIN: 5YRFP05648E000000

AND WHEREAS the vehicle is a motor vehicle, as defined in the Motor Vehicle Act, and is a motor vehicle, as defined in the Motor Vehicle Act, and is a motor vehicle, as defined in the Motor Vehicle Act.

BMW of Canada
2015-01-23

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This is Exhibit C referred to in the Affidavit of Kate Lynn Scott sworn (or affirmed) before me at Vancouver B.C. this 30 day of January 2017
K. J. [Signature]
A Commissioner/Notary Public for the Province of British Columbia

1. CONSIDERATION AND INTENT: THE VEHICLE IS THE PROPERTY OF THE CUSTOMER AND NOT THE RETAILER.

- 1. This Agreement forms an integral part of the agreement of purchase and sale of the Vehicle between the Retailer and the Customer;
- 2. The Vehicle is not the property of the Customer for export purposes;
- 3. The Customer will not, within twelve (12) months of the receipt of the Vehicle by the Customer, either directly or indirectly, export the Vehicle, or permit the Vehicle to be exported from Canada without the express written consent of BMW Canada, which consent will not be unreasonably withholdable;
- 4. The Customer will not, within twelve (12) months of the receipt of the Vehicle by the Customer, permit the Vehicle to be used, either fully or partially, for commercial purposes or for the Vehicle to be used outside of Canada;
- 5. The Customer, knowingly and save the Retailer harmless and from any damages it may suffer for any claim which may be made against it arising out of, and/or pursuant to any breach of the obligations set forth in this Agreement;
- 6. In the event of any violation of the obligations set forth in Sections 2 through 5 above, the Retailer may claim, at its sole discretion, liquidated damages from the Customer in the amount of Fifteen Thousand Dollars (\$15,000.00) for any breach of this Agreement representing the reasonable estimate of the expense and costs which the Retailer can be expected to incur arising from any breach of this Agreement;
- 7. In order to permit BMW Canada and the Retailer to perform their obligations under this Agreement, and BMW Canada's right to conduct any lawful investigation for the vehicle that the Customer enters into with BMW Canada, the Customer agrees that:
 - (a) BMW Canada is a third party beneficiary of this Agreement and may take any action, including legal proceedings, to enforce this Agreement in any jurisdiction BMW Canada or the Retailer have under this Agreement;
 - (b) BMW Canada has the right, but not the obligation, to periodically determine the location of the Vehicle during the twelve (12) months following the Customer's receipt of the Vehicle or, as the case may be, for the duration of the Customer's lease of the Vehicle or financing of the Vehicle through BMW Canada;
 - (c) Vehicle location determination referred to in Section 7(b) may include access to the Vehicle's GPS and/or other technologies to confirm that the Vehicle is located in Canada, as well as automatic alerts that the Vehicle is entering high-risk zones associated with export scenarios, such as borders or docks;
 - (d) BMW Canada may collect and use information about the Vehicle, its owners and operators in connection with investigating the location of the Vehicle or in connection with an actual or suspected breach of this Agreement;

- (c) BMW Canada may use the data for purposes of determining the location of the Vehicle and its status (e.g. on/off line).
- (d) BMW Canada may share any information collected and disclosed by BMW Canada to the Retailer, which may be used for purposes of providing services to the customer, including for the purposes of detecting or preventing fraud.
- (e) If you are a U.S. resident, BMW Canada may disclose any information collected and used by BMW Canada to the Retailer, which may be used for purposes of providing services to the customer, including the location of the Vehicle, with any other personal information and other information collected by the Retailer.
- (f) The rights of BMW Canada and the Retailer in the information collected, used, disclosed, and shared by BMW Canada to the Retailer are subject to any other agreement with the Customer.

B. The Customer agrees that the law of any province of this Agreement will have effect as if provided in the province of Ontario and that the law of that province will govern the interpretation of this Agreement.

This read and understood and I am voluntarily agreeing to be bound by the terms of this BMW Non-Export Agreement:

Went at the City of Winnipeg this 02 day of April 2017.

CUSTOMER

Signature



Winnipeg, Manitoba

Name

KE ZHANG

Name: Robert Clarke

Address

105 St. James St. W.
Winnipeg, MB R2S 1K8

RETAILER

Authorized BMW Retailer Name



THE BMW DEAL

Signature

Name

Robert Clarke

Title

FRM

**This is Exhibit "D" referred to in the Affidavit of
Norman Shields affirmed before me at
Richmond Hill, this 26th day of March 2021**



**A Commissioner for taking Affidavits
for Ontario**



S= 19.10.17
No.
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between:

**BMW FINANCIAL SERVICES CANADA a division of
BMW CANADA INC.**

Petitioner

and:

KE ZHANG and JOHN DOE

Respondents.

ORDER MADE AFTER APPLICATION

[Rule 22-3 of the Supreme Court Civil Rules applies to all forms.]

BEFORE } MASTER SCARTH }30 January 2019

ON THE APPLICATION of the Petitioner, without notice, coming on for hearing at 800 Smithe Street, Vancouver, BC on Wednesday, January 30, 2019, and on hearing Kim Owen LaBelle, lawyer for the Petitioner, and on reading the materials filed by counsel for the Petitioner;

THIS COURT DECLARES that:

- 1. the Conditional Sales Agreement entered into between the Respondent, Ke Zhang, as buyer, and The BMW Store, as dealer, which was assigned to the Petitioner, BMW Financial Services Canada, a division of BMW Canada Inc. (the "Petitioner"), and dated January 2, 2019 (the "Sales Agreement"), is a valid and subsisting security interest and charges the Chattel Security identified therein, for the lease of the following security:

2019 BMW X5 xDrive 40i Vehicle Identification No. 5UXCR6C56KLK88619
(the "Chattel Security");

~~2. the Respondent, Ke Zhang, has breached the terms of the Sales Agreement and that all monies secured by the Chattel Security are now due and owing to the Petitioner,~~

[Handwritten signature]

AND THIS COURT ORDERS that:

- 2. the Respondents, or anyone in the possession of the Chattel Security, divulge the location of, and deliver possession of, the said Chattel Security to the Petitioner pursuant to the Petitioner's contractual entitlements and/or pursuant to the provisions of the *Personal Property Security Act, R.S.B.C. 1996, c. 359*;
- 3. the Petitioner, or its agents, be at liberty to enter upon any lands or premises, including a residence, commercial compound, or locked parking facility, where the said Chattel Security may be located for the purpose of seizing the Chattel Security;
- 4. the Petitioner be awarded its costs at Scale B.
- 5. *the Respondent, Ke Zhang, has liberty to apply to set aside or vary this order on 7 days' notice!*

BY THE COURT

[Handwritten signature]
REGISTRAR

[Handwritten signature]
Kim Owen Labelle
Lawyer for the Petitioner,

This is Exhibit "E" referred to in the Affidavit of
Norman Shields affirmed before me at
Richmond Hill, this 26th day of March 2021



A Commissioner for taking Affidavits
for Ontario



S-195/No. 2
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

BMW FINANCIAL SERVICES CANADA, A DIVISION OF BMW CANADA INC.

PLAINTIFF

AND:

YA LIN BU

DEFENDANT

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a Response to Civil Claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a Response to Civil Claim in Form 2 and a Counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed Response to Civil Claim and Counterclaim on the plaintiff and on any new parties named in the Counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for Response to Civil Claim

A Response to Civil Claim must be filed and served on the plaintiff(s),

- (a) if you were served with the Notice of Civil Claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the Notice of Civil Claim anywhere in the United States of America, within 35 days after that service,

- (c) if you were served with the Notice of Civil Claim anywhere else, within 49 days after that service, or
- (d) if the time for Response to Civil Claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF

Part 1: STATEMENT OF FACTS

Overview of Claim

1. The Defendant, Ya Lin Bu ("Bu"), entered into an agreement with the plaintiff, BMW Financial Services Canada, a division of BMW Canada Inc. ("BMW"), to finance the purchase of a BMW X5 xDrive35i (the "Agreement") bearing vehicle identification number 5UXKROC58J0X84059 (the "Vehicle").
2. BMW remained the owner of the Vehicle throughout the term of the Agreement, and the Defendant agreed to not sell, lease, transfer, sublease, rent, assign, or give up possession of the Vehicle, or their interest in it, without first obtaining the prior written consent of BMW. These terms were critically important, as BMW has an interest in controlling the process of re-selling its vehicles during the term of its agreements in order to:
 - (a) protect its interest in the Vehicle;
 - (b) ensure compliance with Canadian law, as the Vehicle is manufactured to specific Canadian motor vehicle safety and emissions specifications, and not to other countries' regulated motor vehicle safety and emissions specifications;
 - (c) ensure that its vehicles are not used, contrary to law, for any unlawful activity or purposes;
 - (d) ensure that its vehicles are not purchased by individuals, entities, organized crime groups, or money launderers for unlawful purposes or use in unlawful activities; and
 - (e) ensure that its vehicles are not unlawfully exported.
3. In breach of these promises, the Defendant has transferred the Vehicle to unknown third parties without first obtaining BMW's consent and without advising BMW of their intention to do so. Further, the Defendant has refused to advise BMW of the Vehicle's location, and has refused to produce the Vehicle for inspection, despite demand.

4. The Defendant's actions constitute breaches of the Agreement and an unlawful conversion and wrongful detention of BMW's property. BMW seeks redress for the Defendant's contractual breaches and unlawful conversion and detention of its property in this action.

The Parties

5. The plaintiff, BMW, is a company incorporated under the laws of Canada and is registered as an extraprovincial company under the laws of British Columbia, with an address for service in this action c/o Dentons Canada LLP, 20th Floor, 250 Howe Street in Vancouver, British Columbia.
6. The Defendant, Bu, is an individual residing at 335-3000 Riverbend Dr., in Coquitlam, British Columbia.

The Agreement

7. On or about December 1, 2017, Bu entered into the Agreement with BMW retailer MRK Auto West Ltd. dba Auto West BMW. Concurrent with execution of the Agreement, Auto West BMW assigned all of its rights, title, and interest in the Agreement and Vehicle to BMW, by consent.
8. Material terms of the Agreement included the following:
 - (a) the purchase price of the Vehicle is \$94,206.54;
 - (b) the Defendant provided a down payment of \$24,955.74, and must pay the balance of the purchase price in 60 installments of \$1,241.27, due on the first of each month;
 - (c) interest accrues at 2.9% per annum for a total of \$5,225.30 over the term of the Agreement;
 - (d) BMW remains the owner of the Vehicle and retains the benefits of ownership throughout the term of the Agreement;
 - (e) the Defendant is required, at their own cost, to maintain, service, and repair the Vehicle and to keep it in good working order and condition;
 - (f) BMW is entitled to inspect the Vehicle at any reasonable time and place and, when requested by BMW or anyone on BMW's behalf, the Defendant is required to advise BMW of the Vehicle's location and permit the inspection;

- (g) the Defendant is not to remove the Vehicle from BC for a period of more than 30 days without first obtaining the prior written consent of BMW, and is not to remove or export, or attempt to remove or export, the Vehicle from Canada;
 - (h) the Defendant must not sell, lease, or give up possession of the Vehicle, or their interest in it, without first obtaining the prior written consent of BMW;
 - (i) any failure by the Defendant to comply with a term of the Agreement constitutes an event of default, as defined in the Agreement, entitling BMW to, *inter alia*, take possession of the Vehicle without demand, accelerate amounts owing so that all outstanding principal, interest, fees and other amounts are due and payable immediately, sue the Defendant for amounts owing, and exercise any other rights at law;
 - (j) in the event of default or breach of the Agreement, the Defendant is obligated to pay BMW all costs and fees incurred to assert or pursue remedies under the Agreement, or incurred as a result of the Defendant's failure to comply with the Agreement, including reasonable legal fees on a solicitor to client basis;
 - (k) BMW is entitled to use GPS tracking equipment to determine the location of the Vehicle if BMW, in its sole discretion, considers the Defendant to be in default;
 - (l) the Defendant agreed to not disassemble the GPS tracking equipment or any component thereof or to circumvent or control access to or use of the GPS tracking equipment;
 - (m) failure by the Defendant to make any payment when due results in liability to BMW for all reasonable charges and costs incurred as a result of such default, including, *inter alia*, legal costs, and interest at a rate of 18% per year both before and after judgment on the outstanding payment, fees, and accrued but unpaid interest; and
 - (n) the Defendant's obligations under the Agreement remain in effect even if the Vehicle is damaged, lost, stolen, abandoned, or destroyed.
9. On or around December 6, 2017, BMW registered its interest in the Vehicle in the BC Personal Property Security Registry in accordance with the *Personal Property Security Act*, R.S.B.C. 1996, c. 359 ("PPSA").

Default by Bu

10. In or around July 2018, shortly after entering into the Agreement, the Defendant contacted BMW to request a quote for an early payout of the purchase price of the

Vehicle. The Defendant advised BMW that they were not looking to pay the balance of the purchase price at that time, but were just curious.

11. In or around September 2018, the Defendant mailed a bank draft to BMW in the amount of \$59,600.68, representing the balance of the purchase price at that time.
12. The circumstances in which the draft was sent to BMW were suspicious and led BMW to suspect that the Vehicle had been transferred to an unknown third party, without BMW's consent, in breach of the Agreement. In particular:
 - (a) the payout quote was requested, and the bank draft was sent, very early in the 60 month term of the Agreement;
 - (b) the bank draft was sent in the same Canada Express Post envelope as another early payout bank draft for a separate BMW vehicle purchased by a different individual, Yong Li, in the amount of \$73,205.75;
 - (c) both bank drafts were from the same Toronto-Dominion Bank account;
 - (d) both bank drafts were issued on the same day; and
 - (e) both bank drafts appear to have been signed by the same individual, whose name is not decipherable from the signature.
13. As a result of these circumstances, BMW determined that the Defendant was in default of the Agreement.
14. As particularized above, BMW has an interest in maintaining control of the process of re-selling its vehicles during the term of its agreements. BMW remained the owner of the Vehicle during the term of the Agreement and had an interest in enforcing the terms of its contract and preventing unauthorized third party transfers, regardless of the bank draft. Further, the Defendant acknowledged and agreed that BMW had such an interest during the term of the Agreement by committing to the terms restricting sale or transfer of the Vehicle during the term of the Agreement. As such, by reason of the Defendant's breach of these important contractual terms, BMW has refused to deposit the bank draft.
15. Pursuant to its rights under the Agreement, BMW attempted to use the GPS tracking equipment to determine the location of the Vehicle. The GPS tracking equipment for the Vehicle was non-responsive and failed to indicate the Vehicle's location.
16. The failure of GPS tracking equipment to indicate a vehicle's location is rare and unusual. As particularized above, disassembly of the GPS tracking equipment or any

component thereof or attempts to circumvent or control access to or use of the GPS tracking equipment constitute breaches of the Agreement.

17. BMW has demanded that the Defendant advise BMW of the Vehicle's location and produce the Vehicle for inspection, as required pursuant to the Agreement. In default and breach of their obligations under the Agreement, the Defendant has failed, or refused, to advise BMW of the Vehicle's location and to produce the Vehicle for inspection.
18. Subsequent to these demands, BMW again attempted to use GPS tracking technology to determine location of the Vehicle, but the GPS tracking technology was non-responsive.
19. As a result, BMW has been unable to determine the location of the Vehicle and whether it is still in possession of the Defendant.

Conversion and Wrongful Detention of the Vehicle

20. At all material times, BMW has been, and continues to be, the owner of the Vehicle.
21. By reason of the Defendant's default and breaches of the Agreement, as particularized above, BMW is entitled to immediate possession of the Vehicle.
22. The Defendant's continuing refusal to produce the Vehicle to BMW, despite demand, constitutes a wrongful detention and conversion of the Vehicle by the Defendant to their own use.
23. BMW has been wrongfully deprived of the Vehicle as a result of the Defendant's conduct.

Damages

24. As a result of the Defendant's default and breaches of the Agreement, BMW has suffered loss, damage, and expense, including but not limited to:
 - (a) loss of the Vehicle;
 - (b) loss of the ability to sell the Vehicle;
 - (c) loss of control of the Vehicle;
 - (d) loss of BMW's interest entitlement under the Agreement;

- (e) costs and expense of protecting its interest in the Vehicle and enforcing the Agreement, including but not limited to legal fees; and
- (f) such further and other loss, damage, and expense as may be particularized at a trial of this action.

Part 2: RELIEF SOUGHT

- 25. A declaration that the Defendant breached the Agreement and is in default as defined in the Agreement.
- 26. An injunction restraining the Defendant from selling, disposing of or in any way dealing with the Vehicle without consent of BMW.
- 27. An order that the Defendant return the Vehicle to BMW or, alternatively, damages for breach of the Agreement.
- 28. In the further alternative, an order that BMW is entitled to negotiate the September 2018 bank draft.
- 29. Pre-judgment and post-judgment interest in accordance with the Agreement.
- 30. Alternatively, interest in accordance with the *Court Order Interest Act*, R.S.B.C. 1996, c. 79.
- 31. Reimbursement of all charges and costs incurred by BMW in enforcing the Agreement and remedying the Defendants' default, including BMW's legal costs and costs of this proceeding, on a solicitor and client basis in accordance with the Agreement.
- 32. Alternatively, costs of this proceeding in accordance with the *Supreme Court Civil Rules*.
- 33. Such further and other relief as this Honourable Court may deem just.

Part 3: LEGAL BASIS

- 34. The Defendant is in default pursuant to the Agreement and BMW is entitled to the relief sought pursuant to the terms of the Agreement.
- 35. The Defendant has committed the tort of conversion and wrongful detention of goods.
- 36. BMW has suffered loss, damage, and expense as a result of the Defendant's breaches of the Agreement, conversion, and wrongful detention of the Vehicle.

Plaintiff's address for service: Dentons Canada LLP
20th Floor, 250 Howe Street
Vancouver, BC V6C 3R8
Attention: Shea Coulson & Matthew Sveinson

Fax number address for service (if any): N/A

E-mail address for service (if any): N/A

Place of trial: Vancouver, British Columbia

The address of the registry is: The Law Courts
800 Smithe Street
Vancouver, BC V6Z 2E1

Date: 9 /May/2019



Shea Coulson & Matthew Sveinson, lawyers
for the plaintiff

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
- (a) prepare a Bust of Documents in Form 22 that Busts
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the Bust on all parties of record.

APPENDIX

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

Claim for breach of a agreement agreement and return of a vehicle.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

Part 3: THIS CLAIM INVOLVES:

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

Part 4:

This is Exhibit "F" referred to in the Affidavit of
Norman Shields affirmed before me at
Richmond Hill, this 26th day of March 2021



A Commissioner for taking Affidavits
for Ontario



S-19 5474
NO. 1
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

BMW FINANCIAL SERVICES CANADA, A DIVISION OF BMW CANADA INC.

PLAINTIFF

AND:

FENG YUAN LI AND PACIFIC OCEAN WELLNESS & BEAUTY LTD.

DEFENDANTS

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a Response to Civil Claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and**
- (b) serve a copy of the filed response to civil claim on the plaintiff.**

If you intend to make a counterclaim, you or your lawyer must

- (a) file a Response to Civil Claim in Form 2 and a Counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and**
- (b) serve a copy of the filed Response to Civil Claim and Counterclaim on the plaintiff and on any new parties named in the Counterclaim.**

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for Response to Civil Claim

A Response to Civil Claim must be filed and served on the plaintiff(s),

- (a) if you were served with the Notice of Civil Claim anywhere in Canada, within 21 days after that service,**
- (b) if you were served with the Notice of Civil Claim anywhere in the United States of America, within 35 days after that service,**

- (c) if you were served with the Notice of Civil Claim anywhere else, within 49 days after that service, or
- (d) if the time for Response to Civil Claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF

Part 1: STATEMENT OF FACTS

Overview of Claim

1. The defendants, Feng Yuan Li ("LI"), and Pacific Ocean Wellness & Beauty Ltd. ("Pacific") (collectively, the "Defendants"), entered into an agreement with the plaintiff, BMW Financial Services Canada, a division of BMW Canada Inc. ("BMW"), to lease a BMW X5 xDrive35i (the "Lease") bearing vehicle identification number 5UXKROC55JOY06700 (the "Vehicle").
2. BMW remained the owner of the Vehicle throughout the term of the Lease, and the Defendants agreed that they would not sell, lease, transfer, sublease, rent, assign, or give up possession of the Vehicle, or their interest in it, without first obtaining the prior written consent of BMW. These Lease terms were critically important, as BMW has an interest in controlling the process of re-selling its vehicles during the term of its agreements in order to:
 - (a) protect its interest in the Vehicle;
 - (b) ensure compliance with Canadian law, as the Vehicle is manufactured to specific Canadian motor vehicle safety and emissions specifications, and not to other countries' regulated motor vehicle safety and emissions specifications;
 - (c) ensure that its vehicles are not used, contrary to law, for any unlawful activity or purposes;
 - (d) ensure that its vehicles are not purchased by individuals, entities, organized crime groups, or money launderers for unlawful purposes or use in unlawful activities; and
 - (e) ensure that its vehicles are not unlawfully exported.
3. In addition to executing the Lease, the Defendants executed a non-export agreement (the "NEA") in which they, *inter alia*, acknowledged BMW's interest in controlling the

process of re-selling its vehicles during the term of the Lease, and the reasons for this interest.

4. In breach of these promises, the Defendants have transferred the Vehicle to unknown third parties without first obtaining BMW's consent and without advising BMW of their intention to do so. Further, the Defendants have refused to advise BMW of the Vehicle's location, and have refused to produce the Vehicle for inspection, despite demand.
5. The Defendants' actions constitute breaches of the Lease and an unlawful conversion and wrongful detention of BMW's property. BMW seeks redress for the Defendants' contractual breaches and unlawful conversion and detention of its property in this action.

The Parties

6. The plaintiff, BMW, is a company incorporated under the laws of Canada and is registered as an extraprovincial company under the laws of British Columbia, with an address for service in this action c/o Dentons Canada LLP, 20th Floor, 250 Howe Street in Vancouver, British Columbia.
7. The defendant, Pacific, is a company incorporated under the laws of British Columbia with a registered and records office at 101A – 15355 Fraser Highway in Surrey, British Columbia.
8. The defendant, Li, is an individual residing at 15538 91 Avenue in Surrey, British Columbia. Li is the sole director and president of Pacific.

The Lease Agreement

9. On or about May 31, 2018, the Defendants entered into the Lease with BMW retailer Auto West BMW. Concurrent with execution of the Lease, Auto West BMW assigned all of its rights, title, and interest in the Lease and Vehicle to BMW, by consent.
10. Material terms of the Lease included the following:
 - (a) the term of the Lease is 48 months, beginning May 31, 2018;
 - (b) the net leased Vehicle amount is \$85,142.00, and interest accrues at 3.9% per annum for a total of \$9,893.80 over the term of the Lease;
 - (c) the Defendants are required to make 48 monthly payments of \$1,273.17 on the last day of each month;

- (d) Li and Pacific are each jointly and severally liable for the payment of all amounts and the performance of all obligations under the Lease;
- (e) BMW was and remains the owner of the Vehicle and retains the benefits of ownership throughout the term of the Lease;
- (f) the Defendants are required, at their own cost, to maintain, service, and repair the Vehicle and to keep it in good working order and condition;
- (g) BMW is entitled to inspect the Vehicle at any reasonable time and place and, when requested by BMW or anyone on BMW's behalf, the Defendants are required to advise BMW of the Vehicle's location and permit the inspection;
- (h) the Defendants are not to remove the Vehicle from BC to another province or territory in Canada, or to the United States, for a period of more than 30 days without first obtaining the prior written consent of BMW, and are not to remove or export, or attempt to remove or export, the Vehicle from Canada;
- (i) the Defendants are not to sell, lease, transfer, sublease, rent, assign, or give up possession of the Vehicle, or their interest in it, without first obtaining the prior written consent of BMW, which consent BMW was entitled to refuse at its sole discretion, and in the event of a consent transfer, the Defendants are required to pay BMW a fee of up to \$999;
- (j) any failure by the Defendants to comply with a term of the Lease constitutes an event of default, as defined in the Lease, entitling BMW to, *inter alia*, terminate the Lease, take the Vehicle without demand, sue the Defendants for amounts owing, and exercise any other rights at law;
- (k) in the event of default or breach of the Lease, the Defendants forfeit any right to an early purchase of the Vehicle, and are obligated to pay BMW all costs and fees incurred to assert or pursue remedies under the Lease, or incurred as a result of the Defendants' failure to comply with the Lease, including reasonable legal fees on a client to solicitor basis;
- (l) failure by the Defendants to make any payment when due results in liability to BMW for all reasonable charges and costs incurred as a result of such default, including, *inter alia*, legal costs, and interest at a rate of 18% per year both before and after judgment on the outstanding payment, fees, and accrued but unpaid interest; and

- (m) the Defendants' obligations under the Lease remain in effect even if the Vehicle is damaged, lost, stolen, abandoned, or destroyed.
11. Before executing the Lease, and in consideration of the lease of the Vehicle, the Defendants executed the NEA, wherein they acknowledged and agreed that, *inter alia*:
- (a) certain individuals, entities, organized crime groups, and criminal money launderers purchase BMW vehicles for unlawful purposes, such as export, and may attempt to use "nominee" purchasers with no connection to such activities as purchasers in order to evade detection;
 - (b) the Vehicle is manufactured to specific Canadian motor vehicle safety and emissions specifications and not to other countries' safety and emissions specifications; and
 - (c) BMW has a legitimate interest in ensuring the Vehicle's availability and exclusivity in Canada.
12. On or around June 8, 2018, BMW registered its interest in the Vehicle in the BC Personal Property Security Registry in accordance with the *Personal Property Security Act*, R.S.B.C. 1996, c. 359 ("PPSA").

Default by LI and Pacific

13. In or around June 2018 or earlier, shortly after entering into the Lease, the Defendants transferred the Vehicle to an unknown third party. The Defendants did not seek BMW's consent before transferring the Vehicle, and the unauthorized transfer of the Vehicle constitutes a breach of the Lease and event of default as defined in the Lease.
14. In or around August 2018, shortly after entering into the Lease and after already having transferred the Vehicle to unknown third parties, the Defendants informed BMW that they wished to purchase the Vehicle and mailed a bank draft to BMW in the amount of \$93,726.67, representing the balance owed to BMW under the Lease plus applicable taxes.
15. The Defendants had an option to purchase the Vehicle under the Lease, however as particularized above, this option cannot be exercised in the event of default or breach of the Lease.
16. The Defendants are not entitled to exercise the buyout option in the Lease by reason of their default.

17. As particularized above, BMW has an interest in maintaining control of the process of re-selling its vehicles during the term of its leases. BMW remained the owner of the Vehicle during the term of the Lease and had an interest in enforcing the terms of its contract and preventing unauthorized third party transfers, regardless of the bank draft. Further, the Defendant acknowledged and agreed that BMW had such an interest during the term of the Agreement by executing the NEA and committing to the terms restricting sale or transfer of the Vehicle during the term of the Lease. As such, by reason of the Defendants' breach of these important contractual terms, BMW has refused to deposit the bank draft.
18. On multiple occasions, from around August 2018 to around January 2019, BMW has demanded that the Defendants advise BMW of the Vehicle's location and produce the Vehicle for inspection, as required pursuant to the Lease. In default and breach of their obligations under the Lease, the Defendants have failed, or refused, to advise BMW of the Vehicle's location and to produce the Vehicle for inspection.
19. From around August 2018 to present, the Defendants have failed to make scheduled monthly payments as required by the Lease, constituting another event of default.

Conversion and Wrongful Detention of the Vehicle

20. At all material times, BMW has been, and continues to be, the owner of the Vehicle.
21. By reason of the Defendants' default and breaches of the Lease, as particularized above, BMW is entitled to immediate possession of the Vehicle.
22. The unauthorized transfer of the Vehicle and continued refusal by the Defendants to produce the Vehicle to BMW, despite demand, constitute a wrongful detention and conversion of the Vehicle by the Defendants to their own use.
23. BMW has been wrongfully deprived of the Vehicle as a result of the Defendants' conduct.

Damages

24. As a result of the Defendants' default and breaches of the Lease Agreement, BMW has suffered loss, damage, and expense, including but not limited to:
 - (a) loss of use of the Vehicle and the ability to sell the Vehicle;
 - (b) loss of control of the Vehicle;
 - (c) loss of BMW's interest entitlement under the Lease;

- (d) costs and expense of protecting its interest in the Vehicle and enforcing the Lease, including but not limited to legal fees; and
- (e) such further and other loss, damage, and expense as may be particularized at a trial of this action.

Part 2: RELIEF SOUGHT

- 25. A declaration that the Defendants breached the Lease and are in default as defined in the Lease.
- 26. An injunction restraining the Defendants from selling, disposing of or in any way dealing with the Vehicle without consent of BMW.
- 27. An order that the Defendants return the Vehicle to BMW or, alternatively, damages for breach of the Lease.
- 28. In the further alternative, an order that BMW is entitled to negotiate the August 2018 bank draft.
- 29. Pre-judgment and post-judgment interest in accordance with the Lease.
- 30. Alternatively, interest in accordance with the *Court Order Interest Act*, R.S.B.C. 1996, c. 79.
- 31. Reimbursement of all charges and costs incurred by BMW in enforcing the Lease and remedying the Defendants' default, including BMW's legal costs and costs of this proceeding, on a solicitor and client basis in accordance with the Lease.
- 32. Alternatively, costs of this proceeding in accordance with the *Supreme Court Civil Rules*.
- 33. Such further and other relief as this Honourable Court may deem just.

Part 3: LEGAL BASIS

- 34. The Defendants are in default pursuant to the Lease and BMW is entitled to the relief sought pursuant to the terms of the Lease.
- 35. The Defendants have committed the tort of conversion and wrongful detention of goods.
- 36. BMW has suffered loss, damage, and expense as a result of the Defendants' breaches of the Lease, conversion, and wrongful detention of the Vehicle.

Plaintiff's address for service: Dentons Canada LLP
20th Floor, 250 Howe Street
Vancouver, BC V6C 3R8
Attention: Shea Coulson & Matthew Sveinson

Fax number address for service (if any): N/A

E-mail address for service (if any): N/A

Place of trial: Vancouver, British Columbia

The address of the registry is: The Law Courts
800 Smithe Street
Vancouver, BC V6Z 2E1

Date: 9 /May/2019



Shea Coulson & Matthew Sveinson, lawyers
for the Plaintiff

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
- (a) prepare a List of Documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

APPENDIX

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

Claim for breach of a lease agreement and return of a vehicle.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

Part 3: THIS CLAIM INVOLVES:

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

Part 4: